

Garypie, Catherine

From: Garypie, Catherine
Sent: Monday, February 13, 2017 10:42 AM
To: 'Kellmeyer, Joseph'
Cc: Kemper, Ryan Russell; Ogulei, David; Steinbauer, Gary
Subject: RE: Response to EPA re Motion to Stay

Mr. Kellmeyer:

Thank you for your response. EPA Region 5 has no objection to the concept of a motion to stay the entire permit, however we ask for a reasonable time period to review your draft motion prior to authorizing you to represent this to the EAB.

In addition, we do not anticipate taking a position on any grounds Veolia may have for a stay - however, you may wish to note that EPA Region 5 is unable to locate documentation of any alleged past agreement(s) with Veolia regarding a stay. Rather, a review of the case file indicates only that EPA Region 5 stated to Veolia that it may pursue any available legal means of delaying compliance with the renewal permit terms during the pendency of an appeal to the EAB or the Seventh Circuit.

Finally, please clarify what you mean by your statement that "the parties have arrived at agreement on terms and conditions that may not be set forth in their entirety in the final permit."

Thank you, and please do not hesitate to contact me directly at (312) 886-5825 if you wish to discuss this matter.

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From: Kellmeyer, Joseph [mailto:JKELLMEYER@thompsoncoburn.com]
Sent: Friday, February 10, 2017 6:27 PM
To: Garypie, Catherine <garypie.catherine@epa.gov>; Steinbauer, Gary <steinbauer.gary@epa.gov>
Cc: Kemper, Ryan Russell <RKemper@thompsoncoburn.com>; Kellmeyer, Joseph <JKELLMEYER@thompsoncoburn.com>
Subject: Response to EPA re Motion to Stay

Ms. Garypie,

Thank you for your response. Veolia is well aware of the automatic stay pursuant to 40 C.F.R. 71.11(l) and 40 C.F.R. 71.11(i)(2)(ii). However, as you point out, the stay applies only to those permit terms under appeal to the EAB, with the remaining provisions going into effect. In our prior discussions with Region 5, there was an agreement that if the permit

were appealed, Veolia would have the chance to do so without piecemeal implementation of the issued permit. The rationale for this was two-fold: it would allow both parties to focus on the core issues in front of the EAB (and a subsequent appeal, if needed) and would avoid the confusion and difficulties of trying to implement only pieces of the permit while the appeal (or ADR) was progressing.

Additionally, it is our understanding that since the time the draft permit was noticed, the parties have arrived at agreement on terms and conditions that may not be set forth in their entirety in the final permit that is being appealed. When we discussed this concern in 2013, Region 5 was clear that it had no desire to enforce against less than the entire permit.

After taking all of these facts into consideration, Veolia decided the best way to ensure that the entire permit is stayed (and that the prior agreement with Region 5 is implemented) is to make a motion at the beginning of the EAB process.

I would therefore appreciate a response with regard to whether Region 5 will consent to the Motion to Stay the entire permit. If Region 5 agrees, I will, of course, send you the final motion for your review and final consent prior to filing.

Finally, Veolia is also aware of the ADR provisions and the accompanying stay. My client has not made any determinations about ADR at this time, but is taking it under advisement.

Thank you and I look forward to your response on Monday!

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